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**(1980) 01 P&H CK 0066**  
**In the Punjab And Haryana At Chandigarh**  
**Case No : Wealth-tax Case No. 2 of 1976**

Commissioner of Wealth-tax

APPELLANT

Vs

Smt. Kamla Devi

RESPONDENT

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**Date of Decision :** 01-01-1980

**Acts Referred:**

Wealth Tax Act, 1957 — Section 18(1)

**Citation :** (1980) 126 ITR 483

**Hon'ble Judges :** M.R. Sharma, J;B.S. Dhillon, J

**Bench :** Division Bench

**Advocate :** D.N. Awasthy and B.K. Jhingan, for the Appellant; Prem Singh and S.S. Mahajan, for the Respondent

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## Judgement

B.S. Dhillon, J.—The assessee, Smt. Kamla Devi, filed the return of wealth for the assessment year 1969-70 on 27th February, 1971, whereas the same was to be filed on or before 30th September, 1969. For the delay of 16 complete months in filing the return of net wealth, the WTO initiated penalty proceedings and issued a show-cause notice to the assessee. The assessee pleaded that she had filed a petition u/s 18(2A) of the W.T. Act (hereinafter referred to as "the Act"), before the Commissioner of Wealth-tax, Patiala, and the proceedings be kept pending till the decision of that petition. It was pleaded that due to the death of the father of the assessee, Shri Bakhshish Singh, the filing of the return of wealth was delayed; hence no penalty be imposed. The WTO did not accept the assessee's contention and vide his order dated 28th March, 1974, imposed a penalty of Rs. 18,013 u/s 18(1)(a) of the Act.

2. Against the penalty imposed by the WTO the assessee filed an appeal before the AAC. It was pleaded by the assessee that the father of the assessee, Shri Bakhshish Singh, died on 28th May, 1968, without leaving any male issue and the mother of the assessee had a heart attack and ultimately she died on 6th April, 1971, and since the assessee along with her sisters was in a state of shock, and was not in a position to know the share of wealth which would fall to

the share of each one of the sisters, in these circumstances, the return was filed in a delayed manner. The AAC, while accepting that there was force in the argument of the assessee's counsel, held that the delay in filing the return of net wealth was inordinate. He also found that the assessee did not apply for extension of time beyond 31st December, 1969. Considering the application for extension filed up to 31st December, 1969, the AAC condoned the delay in filing the return up to 31st December, 1969, but for the delay beyond that date, he held that the assessee was liable to penalty.

3. Aggrieved by the order of the AAC, the assessee filed an appeal before the Income Tax Appellate Tribunal (hereinafter referred to as "the Tribunal"). The Tribunal held that the explanation furnished by the assessee for the delay in submitting the return of net wealth constituted a reasonable cause for not filing the return by the due date. The Tribunal also held that there was no material on the record to prove that the assessee was actuated by any dishonest motive in delaying her returns of net wealth and, therefore, cancelled the penalty. The Tribunal also relied on their order dated 9th August, 1975, passed in W.T.A. Nos. 79 and 87 of 1974-75, in the case of Smt. Neeta Devi, a sister of the assessee, where the penalty under the Act was imposed by the WTO in similar circumstances and the order of the WTO was set aside in appeal. Feeling aggrieved, the revenue approached the Tribunal requesting for the reference of the following question, which according to the revenue, is a question of law, to this court for its opinion :

"Whether, on the facts and in the circumstances of the case, the Tribunal is correct in holding that the assessee was prevented by a reasonable cause in the filing of her wealth-tax return ?"

4. The Tribunal having refused the application, the revenue has approached this court for the issuance of mandamus.

5. After going through the records of the case, we find that there is no merit in the contention of Shri Awasthy, that the question sought to be referred to this court is a question of law. Shri Awasthy, by placing reliance on a decision of their Lordships of the Supreme Court in Omar Salay Mohamed Sait Vs. Commissioner of Income Tax, Madras, , has vehemently contended that the Tribunal took into consideration both relevant and irrelevant considerations on the basis of which it recorded a finding that penalty was not exigible. We have carefully gone through the order of the Tribunal and find that there is no merit in this contention. The question whether the explanation put forth by the assessee for the delayed filing of the return, in the facts and circumstances of the case, which the Tribunal determined, is essentially a question of fact. The Tribunal held that the explanation put forth by the assessee was plausible and accepted the same. The Tribunal further held that the revenue had failed to prove that the assessee intentionally withheld the filing of the return within time. For that matter, even the AAC had accepted the explanation put forth by the assessee, but partly. We do not find that the Tribunal took into consideration any irrelevant consideration.

That being so, the finding arrived at by the Tribunal is essentially a finding of fact and thus the question which is sought to be referred to this court for its opinion is essentially a question of fact.

6. For the reasons recorded above, there is no merit in this case and the same is hereby dismissed with costs.